

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BEN DAVIS PIZANO,

Petitioner,

CASE NO. 05-70372

HON. LAWRENCE P. ZATKOFF

v.

BERRY D. DAVIS,

Respondent.

**ORDER DENYING PETITIONER'S REQUEST
TO FILE OUT OF TIME OBJECTIONS TO THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the Court on Petitioner's Request to File Out of Time Objections to the Magistrate's Report and Recommendation. *See* Dkt. #30. On December 1, 2005, Magistrate Judge Komives filed a Report and Recommendation to the Court recommending that the Court deny Petitioner's petition for writ of habeas corpus. The Court adopted this recommendation and entered a judgment denying the petition on March 8, 2006.

Pursuant to 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2), a party must file its objections to a Magistrate's report and recommendation within ten days of being served with a copy thereof. Failure to file objections constitutes a waiver of any further right to appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991). In this case, Petitioner did not file objections to the Magistrate's thorough and well-reasoned report despite the three month gap between the report and recommendation and the Court's Order adopting it. Furthermore, Petitioner did not file his current request with the Court until April 2, 2007, nearly thirteen months after the Court dismissed his case and sixteen months after the Magistrate filed his report. Accordingly, the Court finds that Petitioner's request is untimely. Moreover, the

Court finds that Petitioner's objections are without merit and do not alter the conclusion reached by either the Magistrate or this Court to deny his petition for writ of habeas corpus. Therefore,

IT IS ORDERED that Petitioner's request is DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: November 2, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on November 2, 2007.

s/Marie E. Verlinde
Case Manager
(810) 984-3290